

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rena L. Zink,
Appellant,

v.

Keith County Board of Equalization, and
Scott J. and Lindsey D. Jorgensen,
Appellees.

Case No: 17R 0257

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a single family modular home, with a legal description of: Lot 2 Stahl's 1st Sub Replatted Section 5 Township 13 Range 35.
2. The Keith County Assessor (the Assessor) assessed the Subject Property at \$130,130 for tax year 2017.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$126,500 for tax year 2017. After making adjustments based on information presented by the property owners, the Assessor recommended an assessed value of \$127,965 to the County Board.
4. The County Board determined that the taxable value of the Subject Property was \$126,500 for tax year 2017.
5. The Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 5, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Rena L. Zink, the Assessor, was present at the hearing.
8. Randy Fair, Keith County Attorney, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. A private appraisal provided to the Commission indicates that the actual value of the Subject Property is \$126,500. The evidence presented at the hearing indicates that the County Board relied upon this appraisal in determining the assessed value of the Subject Property.
17. The Assessor asserted that the County Board violated USPAP by using information in a private appraisal to determine the assessed value of this property because neither she nor the County Board was an intended user of the appraisal. Neither the County Board nor the Assessor is bound by USPAP rules.
18. The Assessor gave an 8% increase to all rural and suburban improvements and feels since the Board did not give this property the 8% increase it would cause this property to not be equalized with the neighborhood. This parcel was purchased on Oct. 4, 2016 for \$110,000. The value requested by the protester and set by the Board is \$126,500 which would make the assessed to sales ratio 115% on this property.

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

19. The Assessor stated that she had inspected the exterior of the property but did not inspect the interior, she stated that she used the information from the buyer's appraisal to verify the counties information.⁹
20. The Commission finds that an appraisal that is USPAP compliant is relevant evidence of market value, and that the County Board's reliance upon the appraisal was appropriate. The appraiser conducted an interior and exterior inspection of the property and used comparable sales within 20 miles of the subject. In rural Nebraska, using sales from a larger area is sometimes necessary to find good comparable sales.
21. The Assessor has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Assessor has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is Affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 12,925
<u>Improvements</u>	<u>\$113,575</u>
Total	\$126,500

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective on June 12, 2018.

⁹ It is unclear how the Assessor's reliance on the appraisal for verification purposes, in lieu of a physical interior inspection, comports with her assertion that use of the appraisal is prohibited by USPAP rules.

Signed and Sealed: June 12, 2018

James D. Kuhn, Commissioner